
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Melodynamic Broadcasting Corporation
Radio Station WCER
Canton, Ohio

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File No. EB-02-DT-397

NAL/Acct. No. 200332360003

FRN: 0007-96-0818

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Melodynamic Broadcasting Corporation, ("Melodynamic"), licensee of radio station WCER, Canton, Ohio, has apparently violated Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Commission's Rules ("Rules")¹. Respectively, these sections require that the station respond to Commission communications; maintain a copy of the Emergency Alert System (EAS) handbook; maintain a record of the dates of commencement and termination of power determination by the indirect method; maintain a record of the efficiency factor *F* for each mode of operation; make available the record of the most recent antenna impedance measurements; monitor and establish monitoring procedures and schedules to determine compliance with operating power; operate with power not in excess of 105% of the authorized power; operate at times, or with modes or power, specified and made a part of the license; and maintain a written designation of the chief operator. We conclude that Melodynamic is apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000).

II. BACKGROUND

2. On April 6, 2000, agents from the Commission's Detroit Office monitored and made field strength measurements of WCER based on confidential complaints indicating that WCER was operating with power in excess of that authorized both during daytime and nighttime hours. On April 7, 2000, the agents monitored, made field strength measurements and conducted an inspection of WCER. The agents found violations of FCC Rules, including failure to have a copy of the most recent antenna impedance measurements, failure to make notations in the station logs indicating the dates of commencement and termination of measurements using the indirect method of power determination, failure to switch to nighttime power at the correct time, failure to establish monitoring procedures and schedules to determine compliance with Section 73.1560 regarding operating power levels and AM mode of operation, and failure to maintain a record of the value of the efficiency factor *F* for each mode of

¹ 47 C.F.R. §§ 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3)

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operation.

3. On June 27, 2000, the Detroit Office issued a Notice of Violation ("NOV") for eleven rule violations to Melodynamic, and received a written response, dated July 12, 2002, which did not adequately address all the violations.

4. On August 7, 2000, the Detroit Office issued a Continuation of Notice of Violation to Melodynamic requesting additional information regarding eight of the eleven items in the Notice of Violation, and received no response.

5. On October 30, 2000, the Detroit Office sent a Warning via certified mail for failure to respond to the Continuation of Notice of Violation with a corrected copy of the Continuation of Notice of Violation attached. The correction was for a typographical error in the spelling of "Continuation" in the heading only, and again received no response.

6. The Detroit Office received more confidential complaints indicating that WCER was continuing to operate with power in excess of that authorized during daytime and nighttime hours. On June 20, 2002 and June 21, 2002, agents from the Detroit Office monitored and made field strength measurements of WCER prior to and after sunset. During the monitoring periods on June 20 and 21, 2002, no power level changes occurred during daytime and nighttime operation modes. At all times throughout the monitoring period, the field strength measurements taken by the agents indicated that WCER was operating above 105% of the power during daytime and nighttime operation.

7. On June 21, 2002, the agents conducted an inspection of WCER. They made field strength measurements at the same time they observed the transmitter operating power. Using the indirect method of power determination, the agents determined that the station was operating with a transmitter output power of approximately 210 % (1053 watts) of the authorized daytime power of 500 watts and approximately 1,404% (1053 watts) of the authorized nighttime power of 75 watts. The station could not produce a record of the efficiency factor F used to determine the operating power for each mode of operation. The only record available was a general specification sheet from the manufacturer indicating an efficiency factor of 85% or better. The agents also determined that station personnel were not monitoring the station's operating power. The station personnel did not know how to determine the operating power, and the preset nighttime and daytime power switches were set for power levels in excess of the authorized power levels.

8. As a result of the monitoring, field strength measurements, and inspection of WCER, the agents found thirteen violations of FCC Rules, including failure to maintain a copy of the Emergency Alert System (EAS) Operating Handbook, failure to make notations in the station logs indicating the dates of commencement and termination of measurements using the indirect method of power determination, failure to maintain a record of the efficiency factor F for each mode of operation, failure to have a copy of the most recent antenna impedance measurements, failure to establish monitoring procedures and schedules to determine compliance with Section 73.1560 regarding operating power levels and AM mode of operation, operation with power in excess of 105% of the authorized power both during daytime and nighttime operation, failure to switch to nighttime power, and failure to designate a chief operator in writing.

9. On July 18, 2002, the FCC's Detroit Office issued a Notice of Violation to Melodynamic for the thirteen FCC Rule violations. The Detroit Office received no reply.

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10. On October 3, 2002, the FCC's Detroit Office issued a Warning via certified mail for failure to reply to the Notice of Violation dated July 18, 2002. A copy of the July 18, 2002 Notice of Violation was attached. The Detroit Office received no reply.

III. DISCUSSION

11. Section 1.89(b) of the Rules requires a written answer to a Notice of Violation. Section 11.15 requires that a copy of the Emergency Alert System (EAS) handbook be located at the normal duty position or EAS equipment location. Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. Section 73.51(e)(2) requires that a record of the efficiency factor "F" for each mode of operation be kept in the station records. Section 73.1225(d)(1) requires that AM stations must make a copy of the most recent antenna impedance measurements available upon request by FCC representatives. Section 73.1350(c)(1) requires that the licensee establish monitoring procedures and schedules for the station to comply with Section 73.1560 regarding operating power and AM mode of operation. Section 73.1560(a)(1) requires that a station not operate in excess of 105% of the authorized power. Section 73.1745 requires that the station not operate at times, or with modes or power other than those specified and made a part of the license. Section 73.1870(b)(3) requires that the designation of the chief operator be in writing and be posted with the station license.

12. Based on the evidence before us, we find that Melodynamic willfully² and repeatedly³ violated Section 1.89(b) for failure to respond to Commission communications; Sections 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), and 73.1870(b)(3) for failure to maintain required records; Section 73.1350(c)(1) for failure to make required measurements or conduct required monitoring regarding operating power and AM mode of operation; and Sections 73.1560(a)(1) and 73.1745 for operating with power in excess of 105% of the authorized power during daytime and nighttime operation. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$4,000 for failure to respond to Commission communications, \$1,000 for failing to maintain required records, \$2,000 for failure to make required measurements or conduct required monitoring, and \$4,000 for exceeding power limits. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ as amended, ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

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The record reveals that Melodynamic has a history of non-compliance, including a repeat of these violations from prior inspections and the violations are egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that an eleven thousand dollar (\$11,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules⁶, Melodynamic Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willful and repeated violation of Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Rules.

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY, Melodynamic SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360003, FRN: 0007-96-0818.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. 200332360003, FRN: 0007-96-0818.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

19. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Your

⁶ 47 C.F.R. §§ 0.111, and 0.311.

⁷ See 47 C.F.R. § 1.1914.

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certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990

20. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by First Class and Certified Mail, Return Receipt Requested, to Melodynamic Broadcasting Corporation, 4537 22nd Street NW, Canton, Ohio 44708.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office, Enforcement Bureau

Attachment A – FCC List of Small Entities, October 2002